# Supreme Court of the United States

OCTOBER TERM, 1960

No. [illegible]

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF CLAIMS

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IN THE

# Supreme Court of the United States

OCTOBER TERM 1960

No.

JULIETTE G. WEIL,
*Petitioner,*
*against*
THE UNITED STATES OF AMERICA,
*Respondent.*

## PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF CLAIMS

*To the Honorable the Chief Justice of the United States and the Associate Justices of the Supreme Court of the United States:*

Petitioner prays that a Writ of Certiorari be issued to review the order of the United States Court of Claims made January 20, 1960, dismissing petitioner's petition to such Court. The opinion of the Court of Claims, attached hereto as Appendix "A", is reported at 180 F. Supp. 407; 60-1 USTC Par. 9229, 5 AFTR 497.

## Grounds of Jurisdiction

The order of the Court of Claims dismissing the petitioner's petition was entered on January 20, 1960 (R. 24, 29). Petitioner's timely motion for rehearing was denied by order of the Court of Claims entered on April 6, 1960 (R. 44). Jurisdiction of this Court is invoked under 28 U. S. C., Section 1255(1).

## Questions Presented

May gain from the sale of property held as a legal life tenant be taxed to the legal life tenant as income from property held "in trust"?

## Statutes and Regulations Involved

This case involves the following statutes and regulations:

Section 161 of the Internal Revenue Code of 1939 (26 U. S. C. 1952 ed., Sec. 161) and Section 641 of the Internal Revenue Code of 1954 (26 U. S. C. 1952 ed., Supp. II, Sec. 641).

Treasury Regulations 118, Sec. 39.3797-3(a), promulgated under the Internal Revenue Code of 1939.

The said statutes and regulations are set forth in Appendix "B".

## Statement of the Case

By will admitted to probate in the Probate Court for the County of Montgomery, Alabama, on or about March 26, 1937, the petitioner's deceased spouse, Lawrence W. Weil, bequeathed his entire residuary estate to the petitioner for life with contingent remainders to their children.* Distribution of the estate was completed and the executors of the will were discharged in 1939 (R. 24-26).

During the calendar years 1952 to 1955, inclusive, the petitioner sold various securities held by her as life tenant,

* The will had also given petitioner the right to use any part of the corpus of the estate for her comfortable maintenance and support. Petitioner relinquished this right on May 17, 1949, by a document duly filed in the probate court (R. 26-27).

pursuant to authority granted under the will. These securities had either been distributed to her under the decree of the probate court or had been acquired in reinvestment of the proceeds of sale of other securities so distributed (R. 27).

During each of the years involved petitioner realized net capital gains from the sale of such securities (R. 27). She reported these gains on income tax returns for the years 1952 through 1955 filed in the name of the Estate of Lawrence W. Weil (R. 27). All the taxes shown to be due on the said returns were attributable to the capital gains realized on the sale of securities held by the petitioner as life tenant.* All such taxes were timely paid (R. 27-28). The petitioner filed timely claims for refund of these taxes on the ground that she is not taxable either as an individual or as a fiduciary on capital gains realized from the sale of securities held by her as a life tenant. The claims for the years 1952, 1953 and 1955 were rejected by the Commissioner of Internal Revenue. No action was taken by the Commissioner with respect to the refund claimed for the year 1954 (R. 28).

Thereafter the petitioner filed a timely petition for review by the Court of Claims, pursuant to the jurisdiction of said Court under Title 28 U. S. C., Section 1491. The Court of Claims held that the capital gains were not the income of the petitioner and that therefore they were not taxable to her in her individual capacity (R. 22). The Court of Claims also held, however, that the gains were income of

* The capital gains and the taxes paid thereon during the years in question were as follows:

| *Year* | *Net Gain* | *Tax* |
|---|---|---|
| 1952 | $ 13,286.62 | $ 4,125.58 |
| 1953 | 3,517.70 | 694.75 |
| 1954 | 40,536.98 | 10,144.65 |
| 1955 | 118,735.40 | 29,388.99 |

"property held in trust" for the remaindermen and that they were taxable to the petitioner in the capacity of a fiduciary (R. 24).

## Reasons for Granting the Writ *

1. The issue in this case presents an important question with respect to the construction and administration of the Federal income tax. The rule of decision adopted below subjects to retroactive income tax liability, without the protection of any statute of limitations, all life tenants who, in reliance on prior authority, have not treated themselves as trustees for income tax purposes. This Court has previously emphasized the importance of avoiding the evils of retroactivity in the construction of tax statutes. *Helvering v. Griffiths*, 318 U. S. 371 (1943); *Claridge Apartments Co. v. Com'r.*, 323 U. S. 141 (1944).

For at least twenty-five years prior to the decision of the Court of Claims herein, judicial decisions and Treasury rulings and regulations unanimously supported the conclusion that a legal life tenant of property is not subject to income tax as a trustee for the remaindermen with respect to gains realized from the property. Treas. Reg. 118, Sec. 39.3797-3(a); G. C. M. 14693, XIV-1 Cum. Bull. 197 (1935); *Mary M. Shea*, 31 B. T. A. 513 (1934); *U. S. v. Cooke*, 228 Fed. (2d) 667 (9th Cir. 1955); see *U. S. v. National City Bank of New York*, 21 F. Supp. 291 (S. D. N. Y. 1937).* The impact of the decision below is to establish an obligation of a life tenant to file a return and pay tax as a fiduciary where none existed before.

Accordingly, if the rule of the decision stands, it will retroactively open to income tax liability all gains ever rea-

* The continuing vitality of G. C. M. 14693 and of *National City Bank of New York* is evidenced by their recent citation by the Commissioner in Rev. Rul. 56-347, 1956-2 Cum. Bull. 518 and Rev. Rul. 59-99, 1959-1 Cum. Bull. 158.

lized by life tenants. No statute of limitations will protect them if, in reliance on the consistent authorities, they filed no returns as trustees for remaindermen.*

2. The decision below is erroneous and in direct conflict with the language of the statute and its long-standing administrative interpretation. The decision would result in non-uniform administration of the statute by causing the tax treatment of life tenants to depend upon the vagaries of local property rules.

The statutory provisions in question, Section 161, I. R. C. 1939, and Section 641, I. R. C. 1954, impose a tax on income from "property held in trust." Regardless of whether this language is considered to apply only to "ordinary" trusts or to other fiduciary relationships as well, it clearly was not intended to include income from property held in a legal life tenancy.

Other provisions of the Internal Revenue Code unequivocally establish that Congress differentiates life estates from trusts. Sections 167(g) and 642(e), I. R. C. 1954** specify rules for the allocation of depreciation deductions between the holders of the present and future interests in depreciable property. These rules differ for property held "by one person for life with remainder to another person" and for "property held in trust". A similar distinction is drawn in Section 611 (b)(3), I. R. C. 1954*** with respect to the allocation of the depletion deduction.

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* Under the Internal Revenue Code the period of limitations for assessment of income tax does not begin to run until after the tax return has been filed. Sections 6501 (a) and 6501 (c)(3), I. R. C. 1954; cf. *Automobile Club of Michigan* v. *Comm'r*, 353 U. S. 180 (1957).

** The corresponding 1939 Code provisions are in Section 23 (l).

*** The corresponding 1939 Code provision is Section 23(m).

The statutory provisions allowing deductions with respect to the amortization of emergency and grain-storage facilities also explicitly differentiate between a legal life tenancy and a trust and prescribe different rules for apportionment of the deductions in the two cases. See Sections 168(b), 1039(c) and 642(f), I. R. C. 1954.*

These statutory provisions demonstrate a recognition by Congress that legal life tenancies are quite different from trusts and are not to be placed in the trust category by implication. See *Helvering* v. *Hazen Leather Co.*, 313 U. S. 247 (1941).

Until the decision of the Court below, the statutory differentiation between legal life tenancies and trusts also was recognized and followed in long standing administrative interpretations. In 1935 the Treasury issued a ruling which, after a lengthy and careful analysis, concluded that a legal life tenant could not be taxed as a trustee for the remaindermen. G. C. M. 14693, *supra*. The ruling stated that the relationship between life tenant and remainderman "is not such a trust as is ordinarily recognized for income tax purposes." This ruling has never been revoked or amended.

The tax concept of "trust" on which G. C. M. 14693 was based was substantially similar to a definition of "trust" for income tax purposes that shortly before had been adopted by the Treasury in Regulations 86 promulgated under the Revenue Act of 1934. The definition was retained without material change in all subsequent regulations under later revenue acts and is still in effect. It provides that "the term 'trust' as used in the Internal Revenue Code refers to an *ordinary* trust . . ." (italics supplied) Treas. Reg. 118, Sec. 39.3797-3(a). There would not seem to be

* The corresponding 1939 Code provisions are Sections 124A (b), 124B (g) and 172.

any question that a legal life estate is not an "ordinary" trust."

These Treasury interpretations were continued in effect through repeated re-enactments in subsequent revenue acts of the statutory provisions here involved. At no time during such re-enactments were there judicial interpretations conflicting with the administrative interpretations. This Court has recently emphasized that under such circumstances Treasury interpretations are entitled to the force of law in the face of a taxpayer attempt to overturn them. *Commissioner, et al. v. U. S., et al.*, 358 U. S. 498 (1959). Certainly such interpretations should be accorded equal force for the years during which they are in effect, in order to protect taxpayers from being penalized by a Treasury disavowal of its own views.

The decision of the Court below that the corpus of a legal life estate constitutes property held in trust for tax purposes was rested on its conclusion that petitioner's obligations as life tenant to her remaindermen under local law closely resembled those of a trustee of a life interest only. It therefore held that petitioner's legal life estate was "clothed with the characteristics of a trust."

* The Commissioner argued below that the definition in the regulations was merely intended to differentiate the trust entity from other tax entities but not to control its meaning for all income tax purposes. This is contrary to the plain language of the definition, which states that it defines the term "as used in the Internal Revenue Code." In *Lee McRitchie*, 27 T.C. 85 (1956), the Tax Court indicated that the definition in the regulations was adopted to resolve prior judicial differences as to the meaning of the word "trust". The plain language of the definition was followed by the Ninth Circuit in *U. S. v. Coulter*, *supra*.

Nevertheless, the court below accepted the Commissioner's argument (R. 24, footnote 10), as did the Ninth Circuit in *U. S. v. DeBenchamps*, [illegible] Fed. (2d) [illegible], 60-1 USTC par. 9430 (9th Cir. 1960) decided after the decision below, which overruled the *Coulter* case.

Such an analysis of local law obligations is not pertinent where, as here, the meaning of the statute and the intention of Congress are clearly discernible from the language and context of the statute itself. Historically the legal life estate has always been a cardinal example of a property interest from which the trust relationship is distinguished. Explicit Congressional recognition of this distinction is confirmed by the Internal Revenue Code provisions cited above. Coupled with the long standing administrative recognition of the distinction, it makes irrelevant the comparison attempted by the Court below to support its decision. *Biddle* v. *Commissioner*, 302 U. S. 573 (1938).

Congress specifically provided in Section 641, I. R. C. 1954, for the taxation of decedent's estates as well as trusts. Certainly estates have at least as many characteristics in common with trusts as do legal life tenancies. The specific statutory provision for estates would have been unnecessary if Congress intended the term "trust" to be construed as broadly as did the Court below. See *Katherine Titus Mac-Murray*, 16 T. C. 616 (1951), holding that the statutory provisions respecting allocation of the depreciation deduction in the case of "property held in trust" do not apply to property held by a decedent's estate.

The issue in the case at bar presents a Federal question of statutory construction, for which a uniformly applicable Federal rule should be evolved. The reasoning of the decision below instead makes the treatment of the legal life tenant dependant upon the vagaries of local law rules (which for some states may be non-existent) concerning the duties to the remaindermen of a legal life tenant and of a trustee for a life interest only. It is clear that Congress did not intend the taxation of legal life estates to be controlled by variations under local property rules in the degree of similarity between the duties of a life tenant and a trustee. Congress no doubt was aware of the jurispru-

dence concerning the nature of the life tenant's duties[*] which it enacted the revenue laws. Nevertheless, as the foregoing review of the statutory scheme shows, it clearly designated life estates as separate entities from trusts for income tax purposes and left no room for disregarding such separateness on the basis of local law variations with respect to the responsibilities of life tenants.

The statutory provisions here involved do not under any fair reading provide for taxation of a legal life tenant as a trustee with respect to capital gains. However, since such reading may insulate the gains from tax altogether because of the absence of a taxable entity with which they may be connected, the Court below stretched the statute to accomodate the desired result.

The Court was influenced by the frequent dictum of this Court that Congress intended to include within the scope of the income tax all gains and profits constitutionally permitted. *General American Investors Co. Inc.* v. *Com'r*, 348 U. S. 434 (1955). However, that principle is not involved here. No issue has been raised as to whether the capital gains constitute income under the taxing statute. The question is only whether Congress intended a legal life tenant to be taxed on such gains as a trustee.

In succumbing to the temptation to stretch the statute, the Court below neglected to follow a second principle frequently stated by this Court that the courts must read the taxing statutes as Congress has enacted them and that they may not supply legislative omissions. *Crooks* v. *Harrelson*, 282 U. S. 55 (1930).

In at least two cases in this Court this principle has prevailed over the first where income was left free of tax

[*] See, e.g. Restatement of Property (1936) Section 204, Comment (d), Section 209, Comment (a) and Section 210, Comment (a); Bogert, Trust and Trustees (1951), p. 218

through legislative oversight. *Smietanka v. First Trust & Savings Bank*, 257 U. S. 602 (1922); *Reinecke v. Gardner*, 277 U. S. 239 (1928). In *Smietanka*, the Income Tax Law of 1913 was held not to tax income accumulated by a trustee for the benefit of unborn and unascertained beneficiaries. The following language of the Court is particularly appropriate here:

> "No language in the act included a tax on income received by a trustee by him to be accumulated for unborn or unascertained beneficiaries. There was indicated in the taxing paragraph A the congressional intention to tax citizens everywhere, and non-citizens, resident in the United States, including persons, natural and corporate, on income from every source less allowed deductions. But nowhere were words used which can be stretched to include unborn beneficiaries for whom income may be accumulating. It may be that Congress had a general intention to tax all incomes whether for the benefit of persons living or unborn, but a general intention of this kind must be carried into language which can be reasonably construed to effect it. Otherwise the intention can not be enforced by the courts. The provisions of such acts are not to be extended by implication." (at pp. 605-606)

## CONCLUSION

Petitioner prays that a Writ of Certiorari issue to the United States Court of Claims to review its judgment.

Respectfully submitted,

JOHN P. ALLISON,
*Attorney for Petitioner.*

ARTHUR L. KIMMELFIELD,
*Of Counsel.*

July 1, 1960

[Appendices Follow]

## APPENDIX "A"

The following is the full text of the opinion, findings of fact and conclusion of law of the Court of Claims in the instant case:

### OPINION

JONES, *Chief Judge*, delivered the opinion of the court:

The plaintiff in this action seeks to recover federal income taxes for the years 1952 through 1955. The issue involved here is whether the plaintiff, as a life tenant under the will of her deceased husband, is taxable, either as an individual or as a fiduciary, on the capital gains realized from the sale of the securities held by her as a life tenant.

All material facts have been stipulated. The plaintiff is the surviving spouse of Lawrence W. Weil, who died on March 20, 1937, domiciled in the State of Alabama, leaving a will which was probated in the Probate Court of the County of Montgomery, Alabama.

The will directed that the entire residuary estate be bequeathed to plaintiff for life with the contingent remainders to their children.

The will further provided:

> During the life of my wife, Juliette Weil, she shall have possession and control of my entire estate and shall be entitled to the entire income therefrom, and should she find it necessary for her comfortable maintenance and support to use any part of the corpus of said estate, she shall have the full right to do so. She shall have the right to collect any or all indebtedness of any kind that may be due to my estate and shall also have the right, in her absolute discretion, to sell, mortgage, pledge or dispose of all or any part of said estate, real, personal or mixed, for such amount and on such terms and in any manner that she may see fit. Any amounts collected by her, however, from any indebtedness due my estate or from the sale of all or any part of my estate shall be reinvested by her either in real or personal property of any kind

> and in her discretion, such reinvestments to take the place of and stand as a substitute for the amounts collected by her or for the assets of the estate sold by her. Any purchaser from her, however, shall not be responsible for the proper reinvestment [sic] of the funds.

All of the property devised and bequeathed by the will of Lawrence W. Weil was distributed during 1939 and the administration of the estate was concluded in that year. A decree of the probate court, after reciting "that all the securities listed * * * [in the decree] were bequeathed to Juliette G. Weil for life, with the power of selling such securities as she should think best," ordered that such securities "be transferred to Juliette G. Weil as life tenant under the will of Lawrence W. Weil, deceased."

On May 17, 1949, the plaintiff executed a document whereby she relinquished the right accorded her by the will to use any part of the corpus of the estate for her comfortable maintenance and support. She reserved, however, all other rights and interests vested in her by the will.

During the calendar years 1952-1955, inclusive, the plaintiff sold various securities held by her as life tenant, pursuant to authority granted under the will. Net capital gains were realized on these sales during each of the several years involved. These securities which had been sold had either been distributed to the plaintiff under the decree of the probate court or had been acquired by reason of reinvestment of the proceeds of the sale of securities so distributed.

All the securities owned by the plaintiff as life tenant during the years in question, including the securities on which the capital gain was realized, were in the custody of an investment firm in an account which was maintained in the name of the plaintiff as life tenant. All such securities were registered in a "street" name.

The net capital gains realized from the sale of the securities were reported on income tax returns for the years 1952-1955 by plaintiff and filed in the name of the Estate of

Lawrence W. Weil. All the taxes paid were attributable to the capital gains realized on the sale of the securities held by the plaintiff as life tenant. The plaintiff filed claims for refund of these taxes on the ground that she is not taxable either as an individual or as a fiduciary on capital gains realized from the sale of securities held by her as a life tenant. The claims for the years 1952, 1953, and 1955 were rejected by the Commissioner of Internal Revenue. No action has been taken by the Commissioner with respect to the refund claimed for the year 1954.

We shall examine first the Government's somewhat equivocal contention that the plaintiff is taxable in her individual capacity, and its underlying premise that the capital gain should be treated as the plaintiff's income. In taxing the income "of every individual" (Int. Rev. Code of 1939, § 1(a)) the Congress taxes the owner of the income.[1] The concept of ownership for income tax purposes is of course broader than at common law,[2] but the control exercised by the plaintiff over the property held in the life tenancy cannot fairly be equated with ownership.

Although plaintiff is entitled to "the entire income" from the residuary estate for life, this "income," under the terms of the will, does not include gains realized on the sale of the assets. Her only interest in capital gains was a right to the income from their reinvestment.[3] Unquestionably, the plaintiff might derive some economic benefit from the capital gains realized on the sale of the securities.[4] The

[1] *Poe* v. *Seaborn*, 282 U. S. 101, 109 (1930).

[2] *See Helvering* v. *Clifford*, 309 U. S. 331 (1940).

[3] We are not called upon to determine what might have been the tax consequences had the plaintiff failed to release her power to invade the corpus of the estate prior to the realization of the capital gains in question.

[4] "Taxation is not so much concerned with the refinements of title as it is with actual command over the property taxed — the actual benefit for which the tax is paid." *Corliss* v. *Bowers*, 281 U. S. 376, 377-378 (1930). See also *Burnet* v. *Wells*, 289 U. S. 670, 677-678 (1933).

benefit, however, is necessarily limited to the possible increase in ordinary income resulting from the increase in the value of the corpus.

Furthermore, the plaintiff could not bequeath the property held as life tenant. We therefore hold that the capital gains in question were not income to the plaintiff in her individual capacity.[5]

The alternative question presented is whether the plaintiff is required to pay a tax on the gain as a fiduciary of a trust. Section 161(a)(1) of the Internal Revenue Code of 1939 (now Internal Revenue Code of 1954, § 641(a)(1)) provides:

> SEC. 161. Imposition of Tax.
>
> (a) Application of Tax.—The taxes imposed by this chapter upon individuals shall apply to the income of estates or of any kind of property held in trust, including—
>
> (1) Income accumulated in trust for the benefit of unborn or unascertained persons or persons with contingent interests, and income accumulated or held for future distribution under the terms of the will or trust.

Section 142 of the Internal Revenue Code of 1939 requires returns from every fiduciary[6] (except a receiver appointed by authority of law in possession of part only of the property of an individual), and section 3797(a)(6)[7] defines the term "fiduciary" to mean a guardian, trustee, executor, administrator, receiver, conservator, "or any person acting in any fiduciary capacity for any purpose."

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[5] See *William R. Todd*, 44 B. T. A. 776 (1941); *United States* v. *Cooke*, 228 F. 2d 667 (9th Cir. 1955).

[6] Sections 6012 (a), (b) and 6065 (a) contain similar requirements.

[7] Internal Revenue Code of 1939, § 3797(a)(6), was reenacted as § 7701(a)(6) of the Internal Revenue Code of 1954.

In *Helvering* v. *Butterworth*, 290 U. S. 365, 369 (1933), the Supreme Court stated that

> The evident general purpose of the statute [43 Stat. 275 (1924) (the predecessor of Int. Rev. Code of 1939, § 161)] was to tax in some way the whole income of all trust estates. * * * Certainly, Congress did not intend any income from a trust should escape taxation unless definitely exempted.

The question, then, is whether there is a trust within the meaning of section 161. Our approach to this issue is influenced by the repeated dictum of the Supreme Court that there is a "legislative design to reach all gain constitutionally taxable unless specifically excluded." *General Investors Co.* v. *Commissioner*, 348 U. S. 434, 436 (1955).

The plaintiff urges that the phrase "property held in trust" in section 161 refers to a technical trust, and that the relationship between the life tenant and the remaindermen in the case at bar does not meet the requirements of a technical trust under applicable state law.[2] We believe that plaintiff's interpretation is too narrow, and that the statute refers, instead, to relationships which are "clothed with the characteristics of a trust."[3]

It is evident that had a life interest been given to a technical trustee to be administered by him for the benefit of the plaintiff with contingent remainders over to the sons of the deceased the gain involved here would have been taxable to the fiduciary. However, "in such case the relations between the trustee of a life interest only and the owners of succeeding future interests are identical to the relations between an ordinary legal life tenant and the owners of succeeding future interests." The trust character of the first holding

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[2] *Linenthal* v. *Birmingham Trust & Savings Company*, 249 Ala. 631, 32 So. 2d 368 (1947).

[3] *Ferguson* v. *Forstmann*, 25 F. 2d 47, 49 (3d Cir. 1928); see also *Hart* v. *Commissioner*, 54 F. 2d 848 (1st Cir. 1932); *Commissioner* v. *Owens*, 78 F. 2d 768, 773 (10th Cir. 1935).

has significance as between the trustee and the person entitled to beneficial life interest but cannot regulate the relations between the trustee and the persons entitled to the succeeding legal interests." Restatement, Property, § 202, comment *d* (1936).

In light of this we believe that the taxability of the gains involved here should depend, not on whether there is a separation of the legal and equitable interests in the life estate, but on the relationship between the holder of the life interest and the owners of the succeeding future interests.

Under applicable state law the legal life tenant and the trustee of a life interest only have the same fiduciary obligation toward the owners of succeeding future interests. They cannot appropriate the principal to themselves or intentionally injure the remaindermen by the way in which they use the property. And a court of equity may require a life tenant to safeguard the remainderman's interest by giving security for property in his possession. *Frue* v. *Community Chest of Birmingham and Jefferson Co.*, 241 Ala. 591, 4 So. 2d 140 (1941). See also Restatement, Property, § 202, comment *d* (1936).

It is in this sense that the plaintiff (as well as a technical trustee for a life interest only) is the fiduciary of "property held in trust" within the meaning of section 161.[10]

We therefore hold that the income involved in this case is taxable under section 161 as the income of "property held

[10] The Treasury Regulations 118, promulgated under the Internal Revenue Code of 1939, § 39.3797-3, definition of a trust purports only to distinguish between an ordinary trust and a trust which is an association taxable as a corporation, and is therefore not applicable here. Moreover, the fiduciary obligation of the life tenant and the trustee of a life interest only is enforceable in a tribunal exercising equitable jurisdiction and with the procedures characteristic of equity. *Frue* v. *Community Chest of Birmingham and Jefferson Co.*, 241 Ala. 591, 4 So. 2d 140 (1941); see also Restatement, Property, § 202, comment *g* (1936).

in trust" and that the plaintiff was required to pay the tax in her capacity as a fiduciary.[11]

The plaintiff is not entitled to recover and the petition is dismissed.

It is so ordered.

BARKSDALE, *District Judge*, sitting by designation; LARAMORE, *Judge*; MADDEN, *Judge*; and WHITAKER, *Judge*, concur.

## FINDINGS OF FACT

The court, having considered the evidence, the report of Trial Commissioner Mastin G. White, and the briefs and argument of counsel, makes findings of fact as follows:

1. The plaintiff is the surviving spouse of Lawrence W. Weil, who died on or about March 20, 1937, domiciled in the State of Alabama and leaving a last will and testament, which was duly admitted to probate in the Probate Court for the County of Montgomery, Alabama (hereinafter referred to as "the probate court"), on or about March 26, 1937. The will, after directing that the testator's just debts and funeral expenses be paid and bequeathing $500 to a cousin of the testator, provided as follows:

> III
>
> All the rest, residue and remainder of my estate and all real, personal or mixed property of every kind, character and description, wheresoever situate, of which I shall die seized and possessed or to which I may be entitled or in which I may be interested at the time of my decease, I give, devise and bequeath to my beloved wife, Juliette Weil, for and during the term of her natural life and at her death to my two children, Lawrie W. Burnham and Richard Weil, share and share alike, but should they or either of

[11] We have examined the case of *United States* v. *Cooke*, 228 F. 2d 667 (9th Cir. 1955), but must respectfully disagree with its interpretation of section 161.

them be dead at the time of the death of my wife the share of such deceased child shall go to the children or descendants of such deceased child, per stirpes, if any, but if such child is then dead without at that time leaving any children or descendants living, the share of such child shall go to the other child or its children or descendants, as the case may be, per stirpes. During the life of my wife, Juliette Weil, she shall have possession and control of my entire estate and shall be entitled to the entire income therefrom, and should she find it necessary for her comfortable maintenance and support to use any part of the corpus of said estate, she shall have the full right to do so. She shall have the right to collect any or all indebtedness of any kind that may be due to my estate and shall also have the right, in her absolute discretion, to sell, mortgage, pledge or dispose of all or any part of said estate, real, personal or mixed, for such amount and on such terms and in any manner that she may see fit. Any amounts collected by her, however, from any indebtedness due my estate or from the sale of all or any part of my estate shall be reinvested by her either in real or personal property of any kind and in her her discretion, such reinvestments to take the place of and stand as a substitute for the amounts collected by her or for the assets of the estate sold by her. Any purchaser from her, however, shall not be responsible for the proper reinvestment [sic] of the funds.

IV

I hereby nominate and appoint my wife, Juliette Weil; my son-in-law, I. W. Burnham II; my brother-in-law, Leon Weil; and my cousin, Lee H. Weil; or their survivor or survivors, to be the Executors of of this my last will and testament, and hereby exempt them from giving any bond as such Executors.

V

It is my will and I hereby direct that my said Executors shall not be required to file any inventory in or to make any report to or settlement with any Court in so far as the administration of my estate is concerned, it being my wish will and direction that

no Court proceedings shall be had in the administration of my estate, except the probate of this will and the issuance of letters testamentary thereunder.

VI

I hereby authorize and empower my said executors to have and exercise full control over all matters pertaining to the settlement of my affairs and my estate, and I hereby authorize them to sell and dispose of any or all of my effects and property, real, personal or mixed, according to their best judgment, whenever they see fit to do so, and in such manner and upon such terms as they may think best, without the order of any court whatsoever. And I hereby authorize and empower my said Executors to make and execute all necessary deeds and conveyances to any of my property, real, personal or mixed, the same as I could do myself if living.

2. Letters testamentary under the will of Lawrence W. Weil were issued on or about March 26, 1937 by the probate court to the plaintiff, Lee H. Weil, and I. W. Burnham II.

3. All the property devised and bequeathed by the will of Lawrence W. Weil was distributed during 1939, and the administration of the estate was concluded in that year. A decree of the probate court dated June 17, 1939, after reciting "that all the securities listed * * * [in the decree] were bequeathed to Juliette G. Weil for life, with the power of selling such securities as she should think best, the said Juliette G. Weil being one of the executors of the estate," ordered that such securities "be transferred to Juliette G. Weil as life tenant under the will of Lawrence W. Weil, deceased."

4. The executors of the will of Lawrence W. Weil were discharged by a decree of the probate court dated September 26, 1939.

5. On May 17, 1949, the plaintiff, whose name was then Juliette G. Freund, duly executed a document whereby she relinquished the right accorded her by the will of Lawrence

W. Weil to use any part of the corpus of the estate for her comfortable maintenance and support. She reserved, however, all other rights and interests vested in her by the will. The document was duly filed in the probate court.

6. During the calendar years 1952-1955, inclusive, the plaintiff sold various securities held by her as life tenant pursuant to authority granted by the will of Lawrence W. Weil. Net capital gains were realized on such sales during the several years, as follows:

| Year | Net gain |
|---|---|
| 1952 | $13,286.62 |
| 1953 | 3,517.70 |
| 1954 | 40,536.98 |
| 1955 | 118,735.49 |

The securities thus sold had either been distributed to the plaintiff in accordance with the decree of the probate court dated June 17, 1939 (see finding 3), or had been acquired by reinvestment of the proceeds of sales of securities so distributed.

7. All the securities owned by the plaintiff as life tenant during the years in question, including the securities mentioned in finding 6 as having been sold, were in the custody of Burnham & Company, a member of the New York Stock Exchange, in an account that was maintained in the name of the plaintiff as life tenant. All such securities were registered in a "street" name. All purchase and sale orders were given by the plaintiff orally.

8. The net capital gains referred to in finding 6 were reported on income tax returns for the current years 1952, 1953, 1954, and 1955 signed by the plaintiff and filed in the name of the Estate of Lawrence W. Weil with the District Director of Internal Revenue, Upper Manhattan District, New York, N. Y.

9. The plaintiff paid the District Director of Internal Revenue the income taxes assessed with respect to the in-

come tax returns for the years 1952-1955 in the amounts and on the dates set out below:

| *Taxable year* | *Tax* | *Date of filing of return* | *Date payment received by I. D. Form 809* |
|---|---|---|---|
| 1952 | $ 4,125.58 | Mar. 14, 1953 | Mar. 14, 1953 |
| 1953 | 699.75 | Mar. 15, 1954 | Mar. 15, 1954 |
| 1954 | 10,144.65 | Mar. 14, 1955 | May 6, 1955 |
| 1955 | 29,388.99 | Mar. 20, 1956 | Mar. 27, 1956 |

All the taxes paid were attributable to the capital gains referred to in finding 6.

10. On March 14, 1956, the plaintiff filed claims with the District Director of Internal Revenue, Upper Manhattan District, New York, N. Y., for refund of income taxes for the years 1952 to 1954, inclusive, in the following amounts:

| *Taxable year* | *Refund claimed* |
|---|---|
| 1952 | $4,125.58 |
| 1953 | 699.75 |
| 1954 | 10,144.65 |

On March 21, 1956, the plaintiff filed in the same office a claim for refund of income tax for the year 1955 in the amount of $29,388.99. In the claims for refund, the plaintiff alleged that the entire amount of taxes involved was paid with respect to capital gains upon property held by her as life tenant of the Estate of Lawrence W. Weil, and that she was not taxable upon such capital gains.

11. The plaintiff's refund claims for the years 1952, 1953, and 1955 were rejected by the Commissioner of Internal Revenue on or about May 17, 1957. No action has been taken by the Commissioner of Internal Revenue with respect to the refund claim for the year 1954.

12. No part of the amounts of tax with respect to which the refund claims were filed by the plaintiff has been repaid to the plaintiff.

13. The plaintiff is the sole owner of the claims involved in this litigation, and has not at any time assigned or transferred such claims or any part thereof or interest therein.

14. Except as stated in the previous findings, no action has been taken with respect to the claims involved in this litigation, either by Congress or by any of the departments of the Government.

## Conclusion of Law

Upon the foregoing findings of fact, which are made a part of the judgment herein, the court concludes as a matter of law that plaintiff is not entitled to recover and the petition is dismissed.

## APPENDIX "B"

### Statutes and Regulations Involved

*Internal Revenue Code of 1939:*

26 U. S. C. 1952 ed., Sec. 161:

"SEC. 161. Imposition of Tax.

(a) Application of Tax. The taxes imposed by this chapter (other than the tax imposed by subchapter E, relating to tax on self-employment income) upon individuals shall apply to the income of estates or of any kind of property held in trust, including

(1) Income accumulated in trust for the benefit of unborn or unascertained persons or persons with contingent interests, and income accumulated or held for future distribution under the terms of the will or trust;

(2) Income which is to be distributed currently by the fiduciary to the beneficiaries, and income collected by a guardian of an infant which is to be held or distributed as the court may direct;

(3) Income received by estates of deceased persons during the period of administration or settlement of the estate; and

(4) Income which, in the discretion of the fiduciary, may be either distributed to the beneficiaries or accumulated.

(b) Computation and Payment. The tax shall be computed upon the net income of the estate or trust, and shall be paid by the fiduciary, except as provided in section 166 (relating to revocable trusts) and section 167 (relating to income for benefit of the grantor)."

* * * * * *

Sec. 641 of the Internal Revenue Code of 1954 (26 U. S. C. 1952 ed., Supp. II Sec. 641) is substantially the same.

*Treasury Regulations 118, Sec. 39.3797-3(a):*

"39.3797-3 Association distinguished from trust

(a) The term 'trust,' as used in the Internal Revenue Code, refers to an ordinary trust, namely, one created by will or by declaration of the trustees or the grantor, the trustees of which take title to the property for the purpose of protecting or conserving it as customarily required under the ordinary rules applied in chancery and probate courts. The beneficiaries of such a trust generally do no more than accept the benefits thereof and are not the voluntary planners or creators of the trust arrangement. Even though the beneficiaries do create such a trust, it is ordinarily done to conserve the trust property without undertaking any activity not strictly necessary to the attainment of that object."

* * * * *

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SUPREME COURT, U.S.
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AUG 9 1961
JAMES R. BROWNING, Clerk

No. 207

# In the Supreme Court of the United States

OCTOBER TERM, 1960

JULIETTE G. WEIL, PETITIONER

*v.*

UNITED STATES OF AMERICA

*ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF CLAIMS*

## BRIEF FOR THE UNITED STATES IN OPPOSITION

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*ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF CLAIMS*

## BRIEF FOR THE UNITED STATES IN OPPOSITION

### OPINION BELOW

The opinion of the Court of Claims (Pet. 1a–12a) is reported at 180 F. Supp. 407.

### JURISDICTION

The judgment of the Court of Claims was entered on January 20, 1960, and a motion for rehearing was denied on April 6, 1960. The petition for a writ of certiorari was filed on July 1, 1960. The jurisdiction of this Court is invoked under 28 U.S.C. 1255.

### QUESTION PRESENTED

Whether a life tenant empowered to sell real estate assets is taxable as a fiduciary upon capital gains realized upon such sales.

## STATUTES AND REGULATIONS INVOLVED

Sections 142(a)(3), 161(a) and (b), and 3797 (a)(6) of the Internal Revenue Code of 1939, and Section 39.3797-3 of Treasury Regulations 118 are set forth in the Appendix, *infra*, pp. 7-9. Sections 641 and 7701 of the Internal Revenue Code of 1954 are substantially the same as the sections set forth under the 1939 Code.

## STATEMENT

The taxpayer was named the life tenant of a residuary estate, with contingent remainders to her children, under the will of her deceased husband. The will provided that she was to "have the right, in her absolute discretion, to sell, mortgage, pledge or dispose of all or any part of said estate, real, personal, or mixed" (Pet. 1a). Any amounts received by her from such sales were to be reinvested, the reinvestments to take the place of the assets of the estate sold by her[1] (Pet. 1a-2a).

During the taxable years 1952-1955, the taxpayer sold various securities held by her under the will as a life tenant, pursuant to the authority granted under the will. Net capital gains were realized on these sales during each of the years involved (Pet. 2a). These capital gains were reported on income tax returns for each of the years involved which were filed in the name of the estate of her deceased husband by the taxpayer. Subsequently,

[1] The will also provided that the taxpayer would have the right to invade the corpus if she found it necessary for her comfortable maintenance and support (Pet. 1a). This right was specifically waived by the taxpayer (Pet. 2a).

the taxpayer filed claims for refunds of these taxes on the ground that she was not taxable either as an individual or as a fiduciary on such capital gains (Pet. 2a–3a).

The Court of Claims, in a unanimous decision, held that the taxpayer was required to pay the taxes in her capacity as a fiduciary, and dismissed her action for a refund (Pet. 7a).

## ARGUMENT

The decision below is correct and there is no conflict of decisions or other reason warranting review.

1. There is no controversy in this case about the fact that a capital gain was realized on the sale of the securities (Pet. 3). The only question is whether anyone must pay the tax upon such gain. The taxpayer argues, and we agree, that the contingent remaindermen, unascertained as they were during each of the taxable years, clearly could not be held liable for the tax. Accordingly, if the income is to be taxed, the taxing authorities must look to the life tenant clothed here with the characteristics of a trustee toward the remaindermen. Otherwise, for purposes of the taxing statutes, this income would completely escape taxation, despite the "legislative design to reach all gain constitutionally taxable unless specifically excluded." *General Investors Co.* v. *Commissioner*, 348 U.S. 434, 436.

The court below correctly held that a trust existed within the meaning of Section 161 of the Internal Revenue Code of 1939 (Appendix, *infra*, pp. 7–8). See-

tion 161(a) provides that the taxes imposed on individuals—

> shall apply to the income of estates or of any kind of property held in trust, including—
>
> (1) Income accumulated in trust for the benefit of unborn or unascertained persons or persons with contingent interests, and *income accumulated or held for future distribution under the terms of the will* or trust; * * *.
>
> [Emphasis added.]

Moreover, Section 142 requires every fiduciary to make a return, and Section 3797(a)(6) (Appendix, *infra*, p. 8) defines fiduciary as a "guardian, trustee, executor, administrator, receiver, conservator, or any person acting in any fiduciary capacity for any person." Here, the income from these sales was accumulated and held for future distribution under the terms of the will, and petitioner was clearly acting in a fiduciary capacity for the remaindermen.

Petitioner's basic contention, however, is that Section 161 applies to a formal trust and that therefore the income in question is not taxable to anyone because the life tenant in this case is not a formal trustee. Such, indeed, was originally the holding of the Ninth Circuit in *United States* v. *Cooke*, 228 F. 2d 667. But this decision was reconsidered by the Ninth Circuit *en banc* in *United States* v. *De Bonchamps*, 278 F. 2d 127. In *De Bonchamps*, the Ninth Circuit, under a state of facts closely similar to those in the instant case, held that the relationship between the holder of a life interest and the remaindermen possesses the characteristics of a trust within the meaning of Section 641(a) of the 1954 Code (sub-

stantially the same as Section 161(a) of the 1939 Code). Hence, the capital gains received from the sale of the corpus were taxable as trust income to the life tenant as a fiduciary. In reaching its decision, the Ninth Circuit cited with approval the decision below in the instant case, and explicitly rejected its earlier decision in *Cooke*. While no other circuit has ruled on the precise issue presented here and in *de Bonchamps*, many other courts have held that the statute is not limited to the formal trust situation, and have given its terms a generalized construction commensurate with the broad definition of a fiduciary given in the Code. *Hart* v. *Commissioner*, 54 F. 2d 848 (C.A. 1); *Ferguson* v. *Forstmann*, 25 F. 2d 47 (C.A. 3); *Commissioner* v. *Owens*, 78 F. 2d 768 (C.A. 10); *Buckley* v. *Commissioner*, 66 F. 2d 394 (C.A. 2), certiorari denied, 290 U.S. 698. Thus, on the basic issue involved, whether the statute refers only to formal or technical trusts, the courts of appeals are in substantial accord; on the narrower issue presented by this case, whether the life tenant is liable for the tax as a fiduciary, the Ninth Circuit and the Court of Claims alone have decided the question and they are in complete agreement.[2]

---

[2] Far from making tax treatment of life tenants depend upon the vagaries of local law, as taxpayer contends (Pet. 5, 8-9), the decisions below and in *De Bonchamps* make clear that, for purposes of federal tax law, a federal concept of what constitutes a trust applies, rather than a local concept. Local law is looked to only to determine the duties and obligations of the life tenant towards the remaindermen. Once so determined, the question becomes whether or not such duties and obligations suffice to make the life tenant a fiduciary under the federal law.

2. The Regulations do not support the taxpayer's position. The Ninth Circuit, in the disavowed *Cooke* case, based its decision in large part upon the manner in which the term "trust" was defined in the Regulations. See Treasury Regulations 118, Section 39.3797–3 (Appendix, *infra*, p. 9). Upon its reconsideration in *De Bonchamps*, however, the court noted that the definition in the Regulations—as its language clearly indicates—was no more than an attempt to distinguish the so-called business trust taxable as an association from the ordinary type of trust. It was not, as the court below agreed (Pet. 6a), directed towards the issue of life tenancies. Thus, contrary to taxpayer's contention (Pet. 7), a regulation of long-standing has not been overruled by the decision below; rather an incorrect interpretation of such a regulation has been rejected. The regulation still stands for the purposes for which it was drafted: to distinguish between business and ordinary trusts.

## CONCLUSION

For the foregoing reasons, it is respectfully submitted that the petition for a writ of certiorari should be denied.

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AUGUST 1960.

## APPENDIX

Internal Revenue Code of 1939:

SEC. 142 [as amended by Sec. 112(b) of the Revenue Act of 1941, c. 412, 55 Stat. 687; Sec. 11(c) of the Individual Income Tax Act of 1944, c. 210, 58 Stat. 231; and Sec. 202(c)(2) of the Revenue Act of 1948, c. 168, 62 Stat. 110]. FIDUCIARY RETURNS.

(a) *Requirement of Return.*—Every fiduciary (except a receiver appointed by authority of law in possession of part only of the property of an individual) shall make under oath a return for any of the following individuals, estates, or trusts for which he acts, stating specifically the items of gross income thereof and the deductions and credits allowed under this chapter and such other information for the purpose of carrying out the provisions of this chapter as the Commissioner with the approval of the Secretary may by regulations prescribe—

* * * * *

(3) Every trust the net income of which for the taxable year is $100 or over, or the gross income of which for the taxable year is $600 or over, regardless of the amount of net income;

* * * * * *

(26 U.S.C. (1952 ed.) 142)

SEC. 461. IMPOSITION OF TAX.

(a) *Application of Tax.*—The taxes imposed by this chapter upon individuals shall apply to the income of estates or of any kind of property held in trust, including—

(1) Income accumulated in trust for the benefit of unborn or unascertained persons or

persons with contingent interests, and income accumulated or held for future distribution under the terms of the will or trust;

(2) Income which is to be distributed currently by the fiduciary to the beneficiaries, and income collected by a guardian of an infant which is to be held or distributed as the court may direct;

(3) Income received by estates of deceased persons during the period of administration or settlement of the estate; and

(4) Income which, in the discretion of the fiduciary, may be either distributed to the beneficiaries or accumulated.

(b) *Computation and Payment.*—The tax shall be computed upon the net income of the estate or trust, and shall be paid by the fiduciary, except as provided in section 166 (relating to revocable trusts) and section 167 (relating to income for benefit of the grantor).

* * * * * *

(26 U.S.C. (1952 ed.) 161)

Section 641 of the Internal Revenue Code of 1954 (26 U.S.C. 641) is substantially the same.

SEC. 3797. DEFINITIONS.

(a) When used in this title, where not otherwise distinctly expressed or manifestly incompatible with the intent thereof—

* * * * * *

(6) *Fiduciary.*—The term "fiduciary" means a guardian, trustee, executor, administrator, receiver, conservator, or any person acting in any fiduciary capacity for any person.

* * * * * *

(26 U.S.C. (1952 ed.) 3797)

Section 7701 of the Internal Revenue Code of 1954 (26 U.S.C. 7701) is substantially the same.

Treasury Regulations 118, promulgated under the Internal Revenue Code of 1939:

> SEC. 39.3797–3 *Association distinguished from trust.* (a) The term "trust", as used in the Internal Revenue Code, refers to an ordinary trust, namely, one created by will or by declaration of the trustees or the grantor, the trustees of which take title to the property for the purpose of protecting or conserving it as customarily required under the ordinary rules applied in chancery and probate courts. The beneficiaries of such a trust generally do no more than accept the benefits thereof and are not the voluntary planners or creators of the trust arrangement. Even though the beneficiaries do create such a trust, it is ordinarily done to conserve the trust property without undertaking any activity not strictly necessary to the attainment of that object.
>
> (b) As distinguished from the ordinary trust described in the preceding paragraph there is an arrangement whereby the legal title to the property is conveyed to trustees (or a trustee) who, under a declaration or agreement of trust, hold and manage the property with a view to income or profit for the benefit of beneficiaries. Such an arrangement is designed (whether expressly or otherwise) to afford a medium whereby an income or profit-seeking activity may be carried on through a substitute for an organization such as a voluntary association or a joint-stock company or a corporation, thus obtaining the advantages of those forms of organization without their disadvantages. The nature and purpose of a cooperative undertaking will differentiate it from an ordinary trust. The purpose will not be considered narrower than that which is formally set forth in the instrument under which the activities of the trust are conducted.
>
> * * * * *